

**CONSENT STIPULATION  
BETWEEN  
ERIE COUNTY SEWER DISTRICT NO. 3  
AND  
Switzer**

WHEREAS, ERIE COUNTY SEWER DISTRICT NO. 3 (hereinafter "COUNTY") hereby enters into a Consent Stipulation with Switzer (hereinafter "INDUSTRIAL USER") dated 12/6/2017 with respect to an alleged violation of certain sewer use regulations at the Industrial User's facility at 4020 Jeffrey Blvd. Blasdell NY 14219; and

WHEREAS, Industrial User was issued an industrial discharge permit, number ST-10, valid from December 1, 2017 to November 30, 2020; and

WHEREAS, monitoring of Industrial Users Wastewater discharge has indicated alleged violations as follows: Rules & Regulations ("Rules & Regulations"), for Erie County Sewer Districts, Article VI, Section 601 Pretreatment of Industrial Wastewaters and 40 CFR Part 433; and

WHEREAS, Switzer is required to conform to said Rules and Regulations; and

WHEREAS, pursuant to Article XI, Section 1102 of the Rules and Regulations, County and Industrial User hereby agree to enter into said Consent Stipulation whereby Industrial User voluntarily

agrees to comply with the terms and conditions herein described;  
and

WHEREAS, said alleged violations cannot be immediately  
corrected or eliminated because (check all that apply)

- ( ) The cause must be identified
- (X) Pretreatment remedy must be selected
- ( ) Pilot testing must be performed
- (X) Pretreatment facilities must be installed
- ( ) Other (identify \_\_\_\_\_); and

WHEREAS, Industrial User agrees to proceed without admitting,  
accepting or conceding fault or liability and without waiving any  
rights or defenses it may have; and

WHEREAS, Industrial User and County believes that the  
settlement of this matter adequately protects the public interest  
and is made in accordance with the County's Rules and Regulations  
for Erie County Sewer Districts.

NOW, THEREFORE, it is hereby agreed as follows:

- I. The foregoing recitals are incorporated into the terms  
of this Consent Agreement.
- II. The Industrial User will correct or eliminate the  
alleged violation in accordance with the Schedule for Compliance

within the date(s) or times provided therein, which Schedule for Compliance is attached hereto and made a part hereof as Exhibit A.

III. Industrial Discharge Permit No. ST-10 shall continue in effect until November 30, 2020. The terms of this Consent Stipulation shall be in addition to the Industrial Discharge Permit.

IV. Interim Limits (intentionally omitted) for Compliance. (Note, interim limits may not exceed categorical pretreatment limits.)

V. Increase Monitoring (intentionally omitted).

VI. Premium Assessments (intentionally omitted).

VII. If Industrial User fails to meet any of the interim dates in the Schedule for Compliance, Industrial User agrees to pay stipulated penalties in the amount of \$ 50.00 (Fifty Dollars AND NO/100 CENTS) per day for each day such scheduled compliance activity is beyond the milestone date.

VIII. If Industrial User fails to meet the final date in the Schedule for Compliance, Industrial User agrees to pay a stipulated penalty in the amount of \$ 100.00 (One Hundred Dollars AND NO/100 CENTS) per day for each day that Industrial User

fails to meet the final compliance step in the Schedule for Compliance, and further agrees that such failure may subject the Industrial User to enforcement action as if this Consent Stipulation was not in effect with respect to past and current alleged violations which are the subject of this Consent Stipulation.

If Industrial User fails, within 30 days of its due date, to: report on the status of progress on the Schedule for Compliance or fails to report under its industrial discharge permit # ST-10, then Industrial User also agrees to pay stipulated penalties in the amount of \$20.00 (Twenty Dollars AND NO/100 CENTS) per day for each day that such report is more than 30 days past due.

IX. Meeting Limits (Intentionally omitted)

X. Stipulated penalties are payable by certified or cashier's check payable to the Erie County Comptroller and are to be tendered to the District by the 15th day of the month following the month in which the violations occurred, together with a letter describing the basis for the penalties.

XI. The above stipulated penalties shall cease to apply prospectively in the event that Industrial User permanently ceases all discharges; however, all stipulated penalties incurred to such date that all discharges are permanently ceased shall be

immediately paid to the District. If Industrial User permanently ceases all discharges, its Industrial Wastewater Discharge Permit will be thereby immediately revoked.

## XII. GENERAL PROVISIONS

A. All communications hereby required to be made between the parties to this Consent Stipulation shall be made in writing and transmitted by United States Postal Service, or hand-delivered or delivered via a similar carrier service which records delivery, to each of the addresses listed below:

(County): Southtowns Sewage Treatment Plant

S-3690 Lakeshore Road, Buffalo , NY 14219

Attention: Ms. Laura Surdej

(Industrial User): Switzer

4020 Jeffrey Blvd. Blasdell NY 14219

Attention: Mr. Paul Casey

B. In the event that a proceeding to levy a fine is instituted by any state or federal agency against the COUNTY for violation of the SPDES permit as a result of the alleged violation as herein stipulated, the County reserves the right at its sole discretion to terminate this Consent Stipulation immediately. In such event, Industrial User shall have a right to a de novo hearing regarding alleged violations and penalties which were the subject of this Consent Stipulation.

C. Industrial User shall permit any duly designated and properly identified officer, employee or agent of the County of Erie to enter the Industrial User's facilities while attended or operating, without being detained, at any time of the day or night, for inspection purposes and for the purpose of making or causing to be made such sampling and tests as the County deems necessary for ascertaining Industrial User's compliance with the provisions of this Consent Stipulation. Such officer, employee or agent shall report his presence to the Industrial User employee or representative in charge, and shall observe safety rules and requirements, including the necessity to be accompanied by Industrial User's personnel at all times except as mutually agreed.

D. Nothing contained within the terms of this Consent Stipulation are to be construed as limiting the regulatory, statutory and common law rights of the County, the State of New York, and the United States Government with respect to Industrial User's operations. This Consent Stipulation in no way prevents County from bringing an enforcement action against Industrial User for violating any other provision of the applicable laws, regulations, orders and/or the Industrial Wastewater Discharge permit.

E. Industrial User shall notify the County in writing within ten (10) days of any event which causes or may cause a

delay in meeting the Schedule for Compliance, describing in detail the event, anticipated length of the delay, the measures taken and to be taken to prevent or minimize the delay and the time table by which those measures will be implemented.

Industrial User shall give immediate verbal notice to the County as soon as possible, but in no event more than twenty-four (24) hours after discovery of such an event. Industrial User may utilize the County's twenty-four hour telephone number which is (716) 823-8704. Industrial User shall adopt all reasonable measures to avoid or minimize any such delay.

F. Industrial User's obligation to meet the requirements set forth in this Consent Stipulation may be excused only for delay to the extent that such delay is beyond the control of, and without the fault of Industrial User. If Industrial User cannot comply with the requirements and schedules contained in this Consent Stipulation because of an Act of God, war, strike, riot, catastrophe or other condition including official action or delay of governmental bodies, delay of vendors, contractors and/or suppliers which could not reasonably be foreseen and avoided or mitigated, Industrial User may apply in writing to the County for an extension or modification of such schedules. Such application shall contain a specific and detailed justification for the requested extension or modification of said schedules, and a demonstration that Industrial User has used its best efforts including the use of legal process against third parties, where appropriate, to comply with the terms hereof. Increased costs,

changed business conditions or economic hardship shall not constitute an appropriate justification, for the purposes of this paragraph, to excuse non-compliance with any of the terms of this Consent Stipulation. Upon establishment of the conditions set forth above, Industrial User may be entitled to such relief as may be reasonable under the circumstances. The County shall make a final determination on said application.

G. An extension of one compliance date based on a particular incident does not necessarily mean that Industrial User qualifies for an extension of a subsequent compliance date or dates. Industrial User must make an individual showing of proof regarding each incremental step or other requirement for which extension is sought.

H. In the event default in any payments of penalties hereunder COUNTY may on three (3) days written notice suspend the wastewater discharge permit of Industrial User and may after the expiration of said three day period sever Industrial User's connection to the sewerage system. The amount of said penalty, after it accrues, shall become a lien upon the real property used in the operations of Industrial User in accordance with the Rules and Regulations for Erie County Sewer Districts.

I. This Consent Stipulation shall be binding upon Industrial User, its officers, directors, agents, servants, employees, successors, assigns and all persons, firms and



corporation acting under, through or on its behalf. Industrial User shall give notice of this Consent Stipulation to any successors in interest prior to transfer of ownership or operation and shall simultaneously notify the COUNTY that such notice has been given.

J. The terms hereof shall constitute the complete and entire Consent Stipulation between the County and Industrial User. No terms, conditions, understandings or agreements purporting to modify or vary the terms hereof shall be binding unless made in writing and subscribed by the party to be bound. No informal guidance, advice, suggestions or comments by the County regarding reports, proposals, plans, specifications, schedules or any other writings submitted by Industrial User shall be construed as relieving Industrial User of its obligations to obtain such formal approvals as may be required by this Consent Stipulation.

K. By executing this Consent Stipulation, the County does not waive any rights or remedies available to it for violation by Industrial Users of federal or state laws relating to wastewater discharge.

L. Nothing in this Consent Stipulation shall prevent the County from modifying Industrial User's discharge permit pursuant to the Erie County Sewer District Rules and Regulations.

M. Nothing herein shall be construed to limit the authority of the County to undertake any action against any person, including Industrial User in response to conditions which may present an imminent and substantial endangerment to the public or the environment.

N. This Consent Stipulation may be executed in duplicate originals, each of which (if it bears original signatures by all the parties hereto or thereto) shall be deemed an original and fully effective, and all of which together shall be considered one and the same documents.

O. This Consent Stipulation shall terminate upon Industrial User's performance to all of the terms herein stipulated including any extensions granted under the terms hereof and if not terminated by the County as herein provided.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

Switzer

By: \_\_\_\_\_

Printed Name \_\_\_\_\_

Title \_\_\_\_\_

COUNTY OF ERIE

ERIE COUNTY SEWER DISTRICT NO. 3

By: \_\_\_\_\_

Printed Name \_\_\_\_\_

Title \_\_\_\_\_

APPROVED AS TO CONTENT

APPROVED AS TO FORM

\_\_\_\_\_  
Date \_\_\_\_\_

\_\_\_\_\_  
Date \_\_\_\_\_

Doc. No. \_\_\_\_\_

LAS  
11/17

STATE OF NEW YORK )  
COUNTY OF ERIE ) SS.:  
CITY OF BUFFALO )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_,  
before me personally came \_\_\_\_\_, to  
me known, who, being by me duly sworn, did depose and say that  
he is the \_\_\_\_\_ of the Board of Managers of ERIE  
COUNTY SEWER DISTRICT NO. \_\_\_\_\_ 3 \_\_\_\_\_, an administrative unit  
of the County of Erie, described in and which executed the above  
instrument; and that \_\_\_\_\_ he signed h\_\_\_\_\_ name thereto for and on  
behalf of said authority; pursuant to resolution of the Board of  
Managers of Erie County Sewer District No. \_\_\_\_\_ 3 \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

STATE OF )  
COUNTY OF ERIE ) SS.:  
CITY OF )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_,  
before me personally came \_\_\_\_\_, to  
me known, who, being by me duly sworn, did depose and say that  
he resides in Erie County, that \_\_\_\_\_ he is the \_\_\_\_\_  
of Switzer, the corporation described in and which executed the  
above instrument; and that \_\_\_\_\_ he signed h\_\_\_\_\_ name thereto by  
like order.

\_\_\_\_\_  
Notary Public

LAS  
11/17

SCHEDULE FOR COMPLIANCE  
CONSENT STIPULATION  
BETWEEN  
ERIE COUNTY SEWER DISTRICT NO. 3  
AND  
SWITZER

See attached letter prepared by Mr. Paul Casey Safety/Maintenance  
Manager of Switzer, dated November 3, 2017.



11-3-2017

Laura Surdej  
Industrial Waste Water Specialist  
Division of Sewer Management  
S-3690 Lakeshore Road  
Buffalo, NY 14219

Hello Laura, below is the time line for the New Waste Water Treatment Plant install which will Solve the noncompliance issue Switzer has had in the past.

DMP Corp. of Rock Hill S. Carolina will start shipping our new equipment and tanks the week of 12-11-17 and will have all New equipment on site by 12-20-17

Switzer's last day of production will be 12-19-17

Removal of our existing system and the install of the New System will start in the afternoon of 12-19-17 and will be completed on 1-2-18

Production will resume on 1-2-18

Training on the operation and maintenance of the New system will start on 1-2-18 and be completed on 1-12-18

Switzer will do a 3 day sampling on 1-15,16,17-2018

Switzer will make all adjustments or fine tuning needed based on the sampling analysis and re sample if needed.

Switzer plans on having this new system completed by 3-1-18

Switzer has enrolled in DMP's Guarantee Performance which will ensure Switzer's compliance going forward.

We at Switzer look forward to working together with the Erie County Sewer District No 3.

Paul Casey Safety / Maintenance Manager  
SWITZER | Precision. Crafted. Metal.  
4020 Jeffrey Boulevard | Buffalo, NY 14219  
716 821 9393 (x279)